

House Study Bill 185

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/DIVISION OF
BANKING BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to mortgage lending by establishing licensing
2 requirements applicable to mortgage loan originators; making
3 specified modifications to existing licensing provisions
4 relating to mortgage bankers and brokers, regulated loans, and
5 industrial loans; and providing penalties and effective dates.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 1357DP 83
8 rn/nh/24

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1 1 DIVISION I
1 2 MORTGAGE LOAN ORIGINATORS
1 3 Section 1. NEW SECTION. 535D.1 TITLE.
1 4 This chapter shall be known and may be cited as the "Iowa
1 5 Secure and Fair Enforcement for Mortgage Licensing Act".
1 6 Sec. 2. NEW SECTION. 535D.2 LEGISLATIVE FINDINGS AND
1 7 PURPOSE.
1 8 The activities of mortgage loan originators and the
1 9 origination or offering of financing for residential real
1 10 property have a direct, valuable, and immediate impact upon
1 11 this state's consumers, its economy, the neighborhoods and
1 12 communities of this state, and the housing and real estate
1 13 industry. The general assembly finds that accessibility to
1 14 mortgage credit is vital to the state's citizens. The general
1 15 assembly also finds that it is essential for the protection of
1 16 the citizens of this state and the stability of the state's
1 17 economy that reasonable standards for licensing and regulation
1 18 of the business practices of mortgage loan originators be
1 19 imposed. The general assembly further finds that the
1 20 obligations of mortgage loan originators to consumers in
1 21 connection with originating or making residential mortgage
1 22 loans are such as to warrant the regulation of the mortgage
1 23 lending process. The purpose of this chapter is to protect
1 24 consumers seeking mortgage loans and to ensure that the
1 25 mortgage lending industry is operating without unfair,
1 26 deceptive, or fraudulent practices on the part of mortgage
1 27 loan originators.
1 28 Sec. 3. NEW SECTION. 535D.3 DEFINITIONS.
1 29 As used in this chapter, unless the context otherwise
1 30 requires:
1 31 1. "Clerical or support duties" means, subsequent to the
1 32 receipt of a residential mortgage loan application, the
1 33 receipt, collection, distribution, and analysis of information
1 34 common for the processing or underwriting of a residential
1 35 mortgage loan; and communicating with a consumer to obtain the
2 1 information necessary for the processing or underwriting of a
2 2 residential mortgage loan, to the extent that such
2 3 communication does not include offering or negotiating loan
2 4 rates or terms, or counseling consumers about residential
2 5 mortgage loan rates or terms.
2 6 2. "Depository institution" means a depository institution
2 7 as defined in 12 U.S.C. } 1813(c) and a credit union organized
2 8 under the laws of this state, another state, or the United
2 9 States.
2 10 3. "Federal banking agencies" means the board of governors
2 11 of the federal reserve system, the comptroller of the
2 12 currency, the director of the office of thrift supervision,
2 13 the national credit union administration, and the federal
2 14 deposit insurance corporation.
2 15 4. "Immediate family member" means a spouse, child,

2 16 sibling, parent, grandparent, or grandchild. This includes
2 17 stepparents, stepchildren, stepsiblings, and adoptive
2 18 relationships.

2 19 5. "Individual" means a natural person.

2 20 6. "Loan processor or underwriter" means an individual who
2 21 performs clerical or support duties as an employee at the
2 22 direction of and subject to the supervision and instruction of
2 23 a person licensed, or exempt from licensing, under chapter
2 24 535B, 536, 536A, or this chapter.

2 25 7. "Mortgage loan originator" means an individual who for
2 26 compensation or gain or in the expectation of compensation or
2 27 gain takes a residential mortgage loan application or offers
2 28 or negotiates terms of a residential mortgage loan. "Mortgage
2 29 loan originator" does not include any of the following:

2 30 a. An individual engaged solely as a loan processor or
2 31 underwriter except as otherwise provided in section 535D.4,
2 32 subsection 2.

2 33 b. An individual who only performs real estate brokerage
2 34 activities and is licensed in accordance with state law,
2 35 unless the individual is compensated by a lender, a mortgage
3 1 broker, or mortgage loan originator or by any agent of such
3 2 lender, mortgage broker, or mortgage loan originator.

3 3 c. An individual solely involved in extensions of credit
3 4 relating to timeshare plans, as that term is defined in 11
3 5 U.S.C. } 101(53D).

3 6 d. An individual involved solely in servicing residential
3 7 mortgage loans, provided the individual does not take a
3 8 residential mortgage loan application and offer or negotiate
3 9 terms of a residential mortgage loan for compensation or gain.

3 10 8. "Nationwide mortgage licensing system and registry"
3 11 means a mortgage licensing system developed and maintained by
3 12 the conference of state bank supervisors and the American
3 13 association of residential mortgage regulators for the
3 14 licensing and registration of licensed mortgage loan
3 15 originators.

3 16 9. "Nontraditional mortgage product" means any mortgage
3 17 product other than a thirty-year fixed rate mortgage.

3 18 10. "Real estate brokerage activity" means any activity
3 19 that involves offering or providing real estate brokerage
3 20 services to the public, including the following:

3 21 a. Acting as a real estate agent or real estate broker for
3 22 a buyer, seller, lessor, or lessee of real property.

3 23 b. Bringing together parties interested in the sale,
3 24 purchase, lease, rental, or exchange of real property.

3 25 c. Negotiating, on behalf of any party, any portion of a
3 26 contract relating to the sale, purchase, lease, rental, or
3 27 exchange of real property other than in connection with
3 28 providing financing with respect to any such transaction.

3 29 d. Engaging in any activity for which a person engaged in
3 30 the activity is required to be registered or licensed as a
3 31 real estate agent or real estate broker under any applicable
3 32 law.

3 33 e. Offering to engage in any activity, or act in any
3 34 capacity, described in paragraphs "a" through "d".

3 35 11. "Registered mortgage loan originator" means a mortgage
4 1 loan originator who is an employee of a depository
4 2 institution, a subsidiary that is owned and controlled by a
4 3 depository institution and regulated by a federal banking
4 4 agency, or an institution regulated by the farm credit
4 5 administration; and is registered with and maintains a unique
4 6 identifier through the nationwide mortgage licensing system
4 7 and registry.

4 8 12. "Residential mortgage loan" means any loan primarily
4 9 for personal, family, or household use that is secured by a
4 10 mortgage, deed of trust, or other equivalent consensual
4 11 security interest on a dwelling as defined in section 103(v)
4 12 of the federal Truth in Lending Act or on residential real
4 13 estate.

4 14 13. "Residential real estate" means any real property
4 15 located in this state, upon which is constructed or intended
4 16 to be constructed a dwelling as defined in section 103(v) of
4 17 the federal Truth in Lending Act.

4 18 14. "Servicing residential mortgage loans" means, on
4 19 behalf of a note holder, collecting or receiving payments,
4 20 including payments of principal, interest, escrow amounts, and
4 21 other amounts due and owing to the note holder pursuant to a
4 22 residential mortgage loan, and includes, when the borrower is
4 23 in default, or in reasonably foreseeable likelihood of
4 24 default, working with the borrower on behalf of the note
4 25 holder to modify either temporarily or permanently the
4 26 obligation or otherwise mitigate loss on an existing

4 27 residential mortgage loan.
4 28 15. "Superintendent" means the superintendent of banking
4 29 appointed pursuant to section 524.201.
4 30 16. "Unique identifier" means a number or other identifier
4 31 assigned by protocols established by the nationwide mortgage
4 32 licensing system and registry.
4 33 Sec. 4. NEW SECTION. 535D.4 LICENSE AND REGISTRATION
4 34 REQUIRED.
4 35 1. On or after January 1, 2010, an individual shall not
5 1 engage in the business of a mortgage loan originator with
5 2 respect to any residential real estate located in this state
5 3 without first obtaining and maintaining annually a license
5 4 under this chapter. Each licensed mortgage loan originator
5 5 must register with and maintain a valid unique identifier
5 6 issued by the nationwide mortgage licensing system and
5 7 registry.
5 8 2. A loan processor or underwriter who is an independent
5 9 contractor may not engage in the activities of a loan
5 10 processor or underwriter unless such independent contractor
5 11 loan processor or underwriter obtains and maintains a license
5 12 pursuant to this section, and registers with and maintains a
5 13 valid unique identifier issued by the nationwide mortgage
5 14 licensing system and registry.
5 15 3. An individual engaging solely in loan processor or
5 16 underwriter activities shall not represent to the public,
5 17 through advertising or other means of communicating or
5 18 providing information including the use of business cards,
5 19 stationery, brochures, signs, rate lists, or other promotional
5 20 items, that the individual can or will perform any of the
5 21 activities of a mortgage loan originator.
5 22 Sec. 5. NEW SECTION. 535D.4A EXEMPTIONS.
5 23 This chapter does not apply to any of the following:
5 24 1. A registered mortgage loan originator when acting for
5 25 an employer described in section 535D.3, subsection 11.
5 26 2. An individual who offers or negotiates terms of a
5 27 residential mortgage loan with or on behalf of an immediate
5 28 family member of the individual.
5 29 3. An individual who offers or negotiates terms of a
5 30 residential mortgage loan secured by a dwelling that served as
5 31 the individual's residence.
5 32 4. A licensed attorney who negotiates the terms of a
5 33 residential mortgage loan on behalf of a client as an
5 34 ancillary matter to the attorney's representation of the
5 35 client, unless the attorney is compensated by a lender, a
6 1 mortgage broker, or other mortgage loan originator or by any
6 2 agent of such lender, mortgage broker, or other mortgage loan
6 3 originator.
6 4 Sec. 6. NEW SECTION. 535D.5 LICENSE AND REGISTRATION ==
6 5 APPLICATION AND ISSUANCE.
6 6 1. An applicant for licensure shall submit an application
6 7 on a form prescribed by the superintendent.
6 8 2. The superintendent may enter into a contract with the
6 9 nationwide mortgage licensing system and registry or other
6 10 entities designated by the nationwide mortgage licensing
6 11 system and registry to collect and maintain records and
6 12 process transaction fees or other fees related to licensees or
6 13 other persons subject to this chapter.
6 14 3. For the purpose of participating in the nationwide
6 15 mortgage licensing system and registry, the superintendent may
6 16 adopt rules which waive or modify, in whole or in part,
6 17 requirements of this chapter and replace them with
6 18 requirements reasonably necessary to participate in the
6 19 nationwide mortgage licensing system and registry.
6 20 4. In connection with an application for licensing as a
6 21 mortgage loan originator, the applicant shall, at a minimum,
6 22 furnish to the nationwide mortgage licensing system and
6 23 registry information concerning the applicant's identity,
6 24 including all of the following:
6 25 a. Fingerprints for submission to the federal bureau of
6 26 investigation, and any governmental agency or entity
6 27 authorized to receive such information for a state, national,
6 28 and international criminal history background check.
6 29 b. Personal history and experience in a form prescribed by
6 30 the nationwide mortgage licensing system and registry,
6 31 including the submission of authorization for the nationwide
6 32 mortgage licensing system and registry and the superintendent
6 33 to obtain an independent credit report obtained from a
6 34 consumer reporting agency described in section 603(p) of the
6 35 federal Fair Credit Reporting Act; and information related to
7 1 administrative, civil, or criminal findings by any
7 2 governmental jurisdiction.

7 3 c. Any other information requested by the superintendent.
7 4 5. For the purposes of this section and in order to reduce
7 5 the points of contact which the federal bureau of
7 6 investigation may have to maintain for purposes of subsection
7 7 4, the superintendent may use the nationwide mortgage
7 8 licensing system and registry as a channeling agent for
7 9 requesting information from and distributing information to
7 10 the United States department of justice or other governmental
7 11 agency, or to or from any other source so directed by the
7 12 superintendent.

7 13 Sec. 7. NEW SECTION. 535D.6 CONDITIONS OF LICENSURE.

7 14 An applicant for licensure as a mortgage loan originator
7 15 shall demonstrate qualifications as follows:

7 16 1. The applicant has never had a mortgage loan originator
7 17 license revoked in any governmental jurisdiction, except that
7 18 a subsequent formal vacation of such revocation shall not be
7 19 deemed a revocation.

7 20 2. The applicant has not been convicted of, or pled guilty
7 21 or no contest to, a felony in a domestic, foreign, or military
7 22 court during the seven-year period preceding the date of the
7 23 application for licensure; or at any time preceding such date
7 24 of application, if such felony involved an act of fraud,
7 25 dishonesty, or a breach of trust, or money laundering. A
7 26 pardon of a conviction shall not constitute a conviction for
7 27 purposes of this subsection.

7 28 3. The applicant has demonstrated financial
7 29 responsibility, character, and general fitness such as to
7 30 command the confidence of the community and to warrant a
7 31 determination that the applicant will operate honestly,
7 32 fairly, and efficiently within the purposes of this chapter.
7 33 For purposes of this subsection, a person has shown that the
7 34 person is not financially responsible when the person has
7 35 shown a disregard in the management of their own financial
8 1 condition. The superintendent shall not deny a license on the
8 2 sole basis of an applicant's credit score. A determination
8 3 that an individual has not shown financial responsibility may
8 4 include but not be limited to current outstanding judgments,
8 5 except judgments solely as a result of medical expenses;
8 6 current outstanding tax liens or other government liens or
8 7 filings; foreclosures within the past three years; or a
8 8 pattern of seriously delinquent accounts within the past three
8 9 years.

8 10 4. The applicant has completed the prelicensing education
8 11 requirements pursuant to section 535D.7.

8 12 5. The applicant has passed a written test that meets the
8 13 requirements of section 535D.8.

8 14 6. The applicant has met the surety bond requirement or
8 15 paid into a recovery fund as required pursuant to section
8 16 535D.14.

8 17 7. There are no other grounds to deny the applicant a
8 18 license pursuant to rules adopted by the superintendent. Such
8 19 rules may include discretionary grounds for license denial.

8 20 Sec. 8. NEW SECTION. 535D.7 PRELICENSING EDUCATION OF
8 21 LOAN ORIGINATORS.

8 22 1. An applicant for licensure shall complete at least
8 23 twenty hours of prelicensing education approved in accordance
8 24 with subsection 2, which shall include at a minimum the
8 25 following:

8 26 a. Three hours of federal laws and regulations pertaining
8 27 to residential mortgage loan origination.

8 28 b. Three hours of ethics, which shall include instruction
8 29 on fraud, consumer protection, and fair lending issues.

8 30 c. Two hours of training related to lending standards for
8 31 the nontraditional mortgage product marketplace.

8 32 2. Prelicensing education courses shall be reviewed and
8 33 approved by the nationwide mortgage licensing system and
8 34 registry based upon reasonable standards. Review and approval
8 35 of a prelicensing education course shall include review and
9 1 approval of the course provider.

9 2 3. A prelicensing education course that is approved by the
9 3 nationwide mortgage licensing system and registry, and is
9 4 provided by the employer of the applicant or an entity which
9 5 is affiliated with the applicant by an agency contract, or any
9 6 subsidiary or affiliate of such employer or entity, shall meet
9 7 the requirements of this section.

9 8 4. Prelicensing education may be offered either in a
9 9 classroom, online, or by any other means approved by the
9 10 nationwide mortgage licensing system and registry.

9 11 5. Prelicensing education requirements approved by the
9 12 nationwide mortgage licensing system and registry for any
9 13 state shall be accepted as credit towards completion of

9 14 preclicensing education requirements in this state.

9 15 Sec. 9. NEW SECTION. 535D.8 TEST REQUIREMENTS.

9 16 1. An applicant for licensure shall pass a qualified
9 17 written test developed by the nationwide mortgage licensing
9 18 system and registry and administered by a test provider
9 19 approved by the nationwide mortgage licensing system and
9 20 registry based upon reasonable standards.

9 21 2. A written test shall not be treated as a qualified
9 22 written test for purposes of subsection 1 unless the test, in
9 23 the determination of the nationwide mortgage licensing system
9 24 and registry, adequately measures the applicant's knowledge
9 25 and comprehension in appropriate subject areas including the
9 26 following:

9 27 a. Ethics.

9 28 b. Federal laws and regulations pertaining to residential
9 29 mortgage loan origination.

9 30 c. State laws and regulations pertaining to residential
9 31 mortgage loan origination.

9 32 d. Other relevant federal and state laws and regulations,
9 33 including instruction on fraud, consumer protection, the
9 34 nontraditional mortgage marketplace, and fair lending issues.

9 35 3. Nothing in this section shall prohibit a test provider
10 1 approved by the nationwide mortgage licensing system and
10 2 registry from providing a test at the location of the employer
10 3 of the applicant or the location of any subsidiary or
10 4 affiliate of the employer of the applicant, or the location of
10 5 any entity with which the applicant holds an exclusive
10 6 arrangement to conduct the business of a mortgage loan
10 7 originator.

10 8 4. An applicant shall not be considered to have passed a
10 9 qualified written test unless the applicant achieves a test
10 10 score of not less than seventy-five percent correct answers to
10 11 questions. An applicant who fails to achieve a test score of
10 12 not less than seventy-five percent correct answers to
10 13 questions may retake the test three consecutive times with
10 14 each consecutive retake occurring at least thirty days after
10 15 the preceding test. After three consecutive failed tests, an
10 16 individual shall be required to wait at least six months
10 17 before taking the test again. A licensed mortgage loan
10 18 originator who fails to maintain a valid license for a period
10 19 of five years or longer shall be required to retake and
10 20 successfully pass the test, not taking into account any time
10 21 during which such individual is a registered mortgage loan
10 22 originator.

10 23 Sec. 10. NEW SECTION. 535D.9 STANDARDS FOR LICENSE
10 24 RENEWAL AND NONRENEWAL.

10 25 1. The minimum standards for license renewal for a
10 26 mortgage loan originator include the following:

10 27 a. The mortgage loan originator continues to meet the
10 28 conditions for licensure under section 535D.6.

10 29 b. The mortgage loan originator has satisfied the annual
10 30 continuing education requirements described in section
10 31 535D.10.

10 32 c. The mortgage loan originator has paid all required fees
10 33 for renewal of the license.

10 34 2. The license of a mortgage loan originator failing to
10 35 satisfy the minimum standards for license renewal shall not be
11 1 renewed. The superintendent may adopt rules for the
11 2 reinstatement of a license not renewed pursuant to this
11 3 subsection consistent with the standards established by the
11 4 nationwide mortgage licensing system and registry.

11 5 Sec. 11. NEW SECTION. 535D.10 CONTINUING EDUCATION.

11 6 1. A licensed mortgage loan originator shall annually
11 7 complete at least eight hours of education approved in
11 8 accordance with subsection 2, which shall include at a minimum
11 9 the following:

11 10 a. Three hours of federal laws and regulations pertaining
11 11 to residential mortgage loan origination.

11 12 b. Two hours of ethics, which shall include instruction on
11 13 fraud, consumer protection, and fair lending issues.

11 14 c. Two hours of training related to lending standards for
11 15 the nontraditional mortgage product marketplace.

11 16 2. Continuing education courses shall be reviewed and
11 17 approved by the nationwide mortgage licensing system and
11 18 registry based upon reasonable standards. Review and approval
11 19 of a continuing education course shall include review and
11 20 approval of the course provider.

11 21 3. A continuing education course that is approved by the
11 22 nationwide mortgage licensing system and registry and is
11 23 provided by the employer of the mortgage loan originator or an
11 24 entity which is affiliated with the mortgage loan originator

11 25 by an agency contract, or any subsidiary or affiliate of such
11 26 employer or entity, shall meet the requirements of this
11 27 section.

11 28 4. Continuing education may be offered either in a
11 29 classroom, online, or by any other means approved by the
11 30 nationwide mortgage licensing system and registry.

11 31 5. A licensed mortgage loan originator, other than an
11 32 originator subject to license nonrenewal pursuant to section
11 33 535D.9, subsection 2, or making up continuing education
11 34 pursuant to subsection 9 of this section may only receive
11 35 credit for a continuing education course in the year in which
12 1 the course is taken, and may not take the same approved course
12 2 in the same or successive years to meet the annual
12 3 requirements for continuing education.

12 4 6. A licensed mortgage loan originator who is an approved
12 5 instructor of an approved continuing education course may
12 6 receive credit for the licensed mortgage loan originator's own
12 7 annual continuing education requirement at the rate of two
12 8 hours credit for every one hour taught.

12 9 7. Completion of continuing education requirements that
12 10 have been approved by the nationwide mortgage licensing system
12 11 and registry for any state shall be accepted as credit towards
12 12 completion of continuing education requirements in this state.

12 13 8. A licensed mortgage loan originator who subsequently
12 14 becomes unlicensed must complete the continuing education
12 15 requirements for the last year in which the license was held
12 16 prior to issuance of a new or renewed license.

12 17 9. A person meeting the requirements of section 535D.9,
12 18 subsection 1, paragraphs "a" and "c", may make up any
12 19 deficiency in continuing education as established by rule of
12 20 the superintendent.

12 21 Sec. 12. NEW SECTION. 535D.11 DUTIES AND POWERS OF
12 22 SUPERINTENDENT.

12 23 In addition to any other duties imposed upon the
12 24 superintendent by law, the superintendent shall require
12 25 mortgage loan originators to be licensed and registered, as
12 26 provided in this chapter, through the nationwide mortgage
12 27 licensing system and registry. In order to carry out this
12 28 requirement the superintendent may participate in the
12 29 nationwide mortgage licensing system and registry. For this
12 30 purpose, the superintendent may establish by rule requirements
12 31 as necessary, including but not limited to the following:

12 32 1. Applicant background checks for criminal history
12 33 through fingerprint or other databases or through civil or
12 34 administrative records; applicant background checks for credit
12 35 history; or applicant background checks for any other
13 1 information as deemed necessary by the nationwide mortgage
13 2 licensing system and registry.

13 3 2. The payment of application and renewal fees for
13 4 licenses through the nationwide mortgage licensing system and
13 5 registry and any additional fees as determined by the
13 6 superintendent based on the actual cost of the operation of
13 7 the finance bureau of the banking division of the department
13 8 of commerce, including the proportionate share of
13 9 administrative expenses in the operation of the banking
13 10 division attributable to the finance bureau as determined by
13 11 the superintendent, incurred in the discharge of duties
13 12 imposed by this chapter.

13 13 3. Establishment of licensure renewal or reporting dates.

13 14 4. Requirements for amending or surrendering a license or
13 15 any other such activities as the superintendent deems
13 16 necessary for participation in the nationwide mortgage
13 17 licensing system and registry.

13 18 Sec. 13. NEW SECTION. 535D.12 NATIONWIDE MORTGAGE
13 19 LICENSING SYSTEM AND REGISTRY INFORMATION == CHALLENGE
13 20 PROCESS.

13 21 The superintendent shall establish a process by rule
13 22 whereby mortgage loan originators may challenge information
13 23 entered into the nationwide mortgage licensing system and
13 24 registry by the superintendent.

13 25 Sec. 14. NEW SECTION. 535D.13 DISCIPLINARY ACTION AND
13 26 CIVIL ENFORCEMENT AUTHORITY.

13 27 1. The superintendent may, pursuant to chapter 17A, take
13 28 disciplinary action against a licensed mortgage loan
13 29 originator if the superintendent finds any of the following:

13 30 a. The licensee has violated a provision of this chapter
13 31 or a rule adopted pursuant to this chapter or any other state
13 32 or federal law or regulation applicable to the conduct of the
13 33 licensee's business including but not limited to chapters 535
13 34 and 535A.

13 35 b. A fact or condition exists which, had it existed at the

14 1 time of the original application for the license, would have
14 2 warranted the superintendent to refuse to issue the original
14 3 license.

14 4 c. The licensee fails at any time to meet the requirements
14 5 of section 535D.6 or 535D.9, or withholds information or makes
14 6 a material misstatement in an application for a license or
14 7 renewal of a license.

14 8 d. The licensee has violated an order of the
14 9 superintendent.

14 10 2. The superintendent may impose one or more of the
14 11 following disciplinary actions against a licensee:

14 12 a. Revoke a license.

14 13 b. Suspend a license until further order of the
14 14 superintendent or for a specified period of time.

14 15 c. Impose a period of probation under specified
14 16 conditions.

14 17 d. Impose civil penalties in an amount not to exceed five
14 18 thousand dollars for each violation.

14 19 e. Issue a citation and warning concerning licensee
14 20 behavior.

14 21 f. Order a licensee to cease and desist from conducting
14 22 business or from any harmful activities or violations of law
14 23 or rule.

14 24 g. Order the licensee to pay restitution.

14 25 3. The superintendent may order an emergency suspension of
14 26 a licensee's license or issue an order to immediately cease
14 27 and desist from conducting business or from any harmful
14 28 activities or violations of law or rule pursuant to section
14 29 17A.18A. A written order containing the facts or conduct
14 30 which warrants the emergency action shall be timely sent to
14 31 the licensee by restricted certified mail. Upon issuance of
14 32 an emergency suspension order, the licensee must also be
14 33 notified of the right to an evidentiary hearing. A suspension
14 34 proceeding shall be promptly instituted and determined.

14 35 4. A licensee may surrender a license by delivering to the
15 1 superintendent written notice of surrender, but a surrender
15 2 does not affect the licensee's civil or criminal liability for
15 3 acts committed before the surrender.

15 4 5. A revocation, suspension, or surrender of a license
15 5 does not impair or affect the obligation of a preexisting
15 6 lawful contract between the licensee and any person, including
15 7 a mortgagor.

15 8 6. The superintendent may issue an order to a person who
15 9 is not licensed under this chapter to require compliance with
15 10 this chapter, including to cease and desist from conducting
15 11 business or from any harmful activities or violations of law
15 12 or rule, may impose a civil penalty against such person for
15 13 any violation of this chapter in an amount up to five thousand
15 14 dollars for each violation, and may order the person to pay
15 15 restitution.

15 16 7. Before issuing an order under subsection 6, the
15 17 superintendent shall provide the person written notice and the
15 18 opportunity to request a hearing. The hearing must be
15 19 requested within thirty days after receipt of the notice and
15 20 shall be conducted in the same manner as provided for
15 21 disciplinary proceedings involving a licensee under this
15 22 chapter.

15 23 8. A person aggrieved by the imposition of a civil penalty
15 24 under subsection 6 may seek judicial review pursuant to
15 25 section 17A.19.

15 26 9. An action to enforce an order under this section may be
15 27 joined with an action for an injunction.

15 28 Sec. 15. NEW SECTION. 535D.14 SURETY BOND REQUIRED OR
15 29 RECOVERY FUND.

15 30 1. a. A mortgage loan originator shall be covered by a
15 31 surety bond in accordance with this section unless the
15 32 superintendent establishes a recovery fund pursuant to
15 33 subsection 4 into which the mortgage loan originator makes
15 34 payments. In the event that the mortgage loan originator is
15 35 an employee or exclusive agent of a person subject to chapter
16 1 535B, 536, or 536A, the surety bond of such person can be used
16 2 in lieu of the mortgage loan originator's surety bond
16 3 requirement.

16 4 b. The surety bond shall provide coverage for each
16 5 mortgage loan originator in an amount as prescribed in
16 6 subsection 2. The surety bond shall be in a form as
16 7 prescribed by the superintendent. The superintendent may,
16 8 pursuant to rule, determine requirements for such surety bonds
16 9 as are necessary to accomplish the purposes of this chapter.

16 10 2. The bond shall be maintained in an amount that reflects
16 11 the dollar value of loans originated as determined by the

16 12 superintendent.

16 13 3. When an action is commenced on a licensee's bond the
16 14 superintendent may require the filing of a new bond.

16 15 Immediately upon recovery upon any action on the bond the
16 16 licensee shall file a new bond.

16 17 4. If the superintendent determines it is not feasible to
16 18 establish surety bonding requirements that reflect the dollar
16 19 amount of loans originated by a mortgage loan originator, as
16 20 provided in subsection 1508(d)(6) of the federal Housing and
16 21 Economic Recovery Act of 2008, Pub. L. No. 110-289(1508), the
16 22 superintendent may establish by rule a recovery fund to be
16 23 paid into by mortgage loan originators. The rules shall
16 24 provide for the amounts to be paid into the fund by mortgage
16 25 loan originators. In the event the superintendent establishes
16 26 a recovery fund, the fund shall be established as a separate
16 27 fund in the state treasury. Moneys deposited in the fund
16 28 shall be administered by the superintendent and used for the
16 29 purposes of compensating members of the public for losses
16 30 caused by licensees. In addition, the superintendent may use
16 31 moneys from the fund for the purpose of investigating and
16 32 prosecuting violations of this chapter or any other state or
16 33 federal law, rule, or regulation applicable to the conduct of
16 34 a licensee's business. Notwithstanding section 12C.7,
16 35 interest earned on amounts deposited in the fund, if
17 1 established, shall be credited to the fund. Any balance in
17 2 the fund on June 30 of any fiscal year shall not revert to the
17 3 general fund of the state.

17 4 Sec. 16. NEW SECTION. 535D.15 CONFIDENTIALITY.

17 5 1. Except as otherwise provided in section 1512 of the
17 6 federal Housing and Economic Recovery Act of 2008, Pub. L. No.
17 7 110-289(1512), the requirements under any federal law or
17 8 chapter 22 regarding the privacy or confidentiality of any
17 9 information or material provided to the nationwide mortgage
17 10 licensing system and registry, and any privilege arising under
17 11 federal or state law, including the rules of any federal or
17 12 state court, with respect to such information or material,
17 13 shall continue to apply to such information or material after
17 14 the information or material has been disclosed to the
17 15 nationwide mortgage licensing system and registry. Such
17 16 information and material may be shared with any state or
17 17 federal regulatory official with mortgage industry oversight
17 18 authority without the loss of privilege or the loss of
17 19 confidentiality protections provided by federal law or chapter
17 20 22.

17 21 2. The superintendent may enter into agreements or sharing
17 22 arrangements with other governmental agencies, the conference
17 23 of state bank supervisors, the American association of
17 24 residential mortgage regulators, or other associations
17 25 representing governmental agencies.

17 26 3. Information or material that is subject to privilege or
17 27 confidentiality under subsection 1 shall not be subject to any
17 28 of the following:

17 29 a. Disclosure under any federal or state law governing the
17 30 disclosure to the public of information held by an officer or
17 31 an agency of the federal government or this state.

17 32 b. Subpoena or discovery, or admission into evidence, in
17 33 any private civil action or administrative process, unless
17 34 with respect to any privilege held by the nationwide mortgage
17 35 licensing system and registry with respect to such information
18 1 or material, the person to whom such information or material
18 2 pertains waives, in whole or in part, that privilege.

18 3 4. This section supersedes any provision of chapter 22
18 4 relating to the disclosure of confidential supervisory
18 5 information or any information or material described in
18 6 subsection 1 of this section that is inconsistent with
18 7 subsection 1.

18 8 5. This section shall not apply with respect to
18 9 information or material relating to the employment history of,
18 10 and publicly adjudicated disciplinary and enforcement actions
18 11 against, mortgage loan originators that are included in the
18 12 nationwide mortgage licensing system and registry for access
18 13 by the public.

18 14 Sec. 17. NEW SECTION. 535D.16 INVESTIGATION AND
18 15 EXAMINATION AUTHORITY.

18 16 The superintendent may conduct investigations and
18 17 examinations as follows:

18 18 1. For purposes of initial licensing, license renewal,
18 19 license suspension, license conditioning, license revocation
18 20 or termination, or general or specific inquiry or
18 21 investigation to determine compliance with this chapter, the
18 22 superintendent may access, receive, and use any books,

18 23 accounts, records, files, documents, information, or evidence
18 24 including but not limited to:

- 18 25 a. Criminal, civil, and administrative history
- 18 26 information, including criminal history data as specified in
18 27 chapter 692.
- 18 28 b. Personal history and experience information including
18 29 independent credit reports obtained from a consumer reporting
18 30 agency described in section 603(p) of the federal Fair Credit
18 31 Reporting Act.
- 18 32 c. Any other documents, information, or evidence the
18 33 superintendent deems relevant to the inquiry or investigation
18 34 regardless of the location, possession, control, or custody of
18 35 such documents, information, or evidence.

19 1 2. For the purposes of investigating violations or
19 2 complaints arising under this chapter, or for the purposes of
19 3 examination, the superintendent may review, investigate, or
19 4 examine any licensee, individual, or person subject to this
19 5 chapter, as often as necessary in order to carry out the
19 6 purposes of this chapter. The superintendent may direct,
19 7 subpoena, or order the attendance of and examine under oath
19 8 all persons whose testimony may be required about the loans or
19 9 the business or subject matter of any such examination or
19 10 investigation, and may direct, subpoena, or order such person
19 11 to produce books, accounts, records, files, and any other
19 12 documents the superintendent deems relevant to the inquiry.

19 13 3. Each licensee, individual, or person subject to this
19 14 chapter shall make available to the superintendent upon
19 15 request the books and records relating to the operations of
19 16 such licensee, individual, or person. The superintendent
19 17 shall have access to such books and records and interview the
19 18 officers, principals, mortgage loan originators, employers,
19 19 employees, independent contractors, agents, and customers of
19 20 the licensee, individual, or person subject to this chapter
19 21 concerning their business.

19 22 4. Each licensee, individual, or person subject to this
19 23 chapter shall make or compile reports or prepare other
19 24 information as directed by the superintendent in order to
19 25 carry out the purposes of this section including but not
19 26 limited to the following:

- 19 27 a. Accounting compilations.
- 19 28 b. Information lists and data concerning loan transactions
19 29 in a format prescribed by the superintendent.
- 19 30 c. Such other information deemed necessary to carry out
19 31 the purposes of this section.

19 32 5. In making any examination or investigation authorized
19 33 by this chapter, the superintendent may control access to any
19 34 documents and records of the licensee or person under
19 35 examination or investigation. The superintendent may take
20 1 possession of the documents and records or place a person in
20 2 exclusive charge of the documents and records in the place
20 3 where they are usually kept. During the period of control, an
20 4 individual or person shall not remove or attempt to remove any
20 5 of the documents or records except pursuant to a court order
20 6 or with the consent of the superintendent. Unless the
20 7 superintendent has reasonable grounds to believe the documents
20 8 or records of the licensee have been or are at risk of being
20 9 altered or destroyed for purposes of concealing a violation of
20 10 this chapter, the licensee or owner of the documents or
20 11 records shall have access to the documents or records as
20 12 necessary to conduct its ordinary business affairs.

20 13 6. In order to carry out the purposes of this section, the
20 14 superintendent may:

- 20 15 a. Retain attorneys, accountants, or other professionals
20 16 or specialists as examiners, auditors, or investigators to
20 17 conduct or assist in the conduct of examinations or
20 18 investigations.
- 20 19 b. Enter into agreements or relationships with other
20 20 government officials or regulatory associations in order to
20 21 improve efficiencies and reduce regulatory burden by sharing
20 22 resources, standardized or uniform methods or procedures, and
20 23 documents, records, information, or evidence obtained under
20 24 this section.
- 20 25 c. Use, hire, contract, or employ publicly or privately
20 26 available analytical systems, methods, or software to examine
20 27 or investigate the licensee, individual, or person subject to
20 28 this chapter.
- 20 29 d. Accept and rely on examination or investigation reports
20 30 made by other government officials, within or without this
20 31 state.
- 20 32 e. Accept audit reports made by an independent certified
20 33 public accountant for the licensee, individual, or person

20 34 subject to this chapter in the course of that part of the
20 35 examination covering the same general subject matter as the
21 1 audit and may incorporate the audit report in the report of
21 2 the examination, report of investigation, or other writing of
21 3 the superintendent.

21 4 7. The authority of this section shall remain in effect,
21 5 whether such a licensee, individual, or person subject to this
21 6 chapter acts or claims to act under any licensing or
21 7 registration law of this state, or claims to act without such
21 8 authority.

21 9 8. A licensee, individual, or person subject to
21 10 investigation or examination under this section shall not
21 11 knowingly withhold, abstract, remove, mutilate, destroy, or
21 12 secrete any books, records, computer records, or other
21 13 information.

21 14 Sec. 18. NEW SECTION. 535D.17 PROHIBITED ACTS AND
21 15 PRACTICES.

21 16 It is a violation of this chapter for a person or
21 17 individual subject to this chapter to engage in any of the
21 18 following activities:

21 19 1. Directly or indirectly employ any scheme, device, or
21 20 artifice to defraud or mislead borrowers or lenders or to
21 21 defraud any person.

21 22 2. Any unfair or deceptive practice toward any person.

21 23 3. Obtain property by fraud or misrepresentation.

21 24 4. Solicit or enter into a contract with a borrower that
21 25 provides in substance that the person or individual subject to
21 26 this chapter may earn a fee or commission through "best
21 27 efforts" to obtain a loan even though no loan is actually
21 28 obtained for the borrower.

21 29 5. Solicit, advertise, or enter into a contract for
21 30 specific interest rates, points, or other financing terms
21 31 unless the terms are actually available at the time of
21 32 soliciting, advertising, or contracting.

21 33 6. Conduct any business covered by this chapter without
21 34 holding a valid license as required under this chapter, or
21 35 assist or aide and abet any person in the conduct of business
22 1 under this chapter without a valid license as required under
22 2 this chapter.

22 3 7. Fail to make disclosures as required by this chapter or
22 4 any other applicable state or federal law including
22 5 regulations thereunder.

22 6 8. Fail to comply with this chapter or rules or
22 7 regulations promulgated under this chapter, or fail to comply
22 8 with any other state or federal law, including the rules and
22 9 regulations thereunder, applicable to any business authorized
22 10 or conducted under this chapter.

22 11 9. Make, in any manner, any false or deceptive statement
22 12 or representation.

22 13 10. Negligently make any false statement or knowingly and
22 14 willfully make any omission of material fact in connection
22 15 with any information or reports filed with a governmental
22 16 agency or the nationwide mortgage licensing system and
22 17 registry or in connection with any investigation conducted by
22 18 the superintendent or another governmental agency.

22 19 11. Make any payment, threat, or promise, directly or
22 20 indirectly, to any person for the purposes of influencing the
22 21 independent judgment of the person in connection with a
22 22 residential mortgage loan, or make any payment, threat, or
22 23 promise, directly or indirectly, to any appraiser of a
22 24 property, for the purposes of influencing the independent
22 25 judgment of the appraiser with respect to the value of the
22 26 property.

22 27 12. Collect, charge, attempt to collect or charge, or use
22 28 or propose any agreement purporting to collect or charge any
22 29 fee prohibited by this chapter.

22 30 13. Cause or require a borrower to obtain property
22 31 insurance coverage in an amount that exceeds the replacement
22 32 cost of the improvements as established by the property
22 33 insurer.

22 34 14. Fail to truthfully account for moneys belonging to a
22 35 party to a residential mortgage loan transaction.

23 1 Sec. 19. NEW SECTION. 535D.18 REPORT TO NATIONWIDE
23 2 MORTGAGE LICENSING SYSTEM AND REGISTRY.

23 3 The superintendent shall regularly report violations of
23 4 this chapter, as well as enforcement actions and other
23 5 relevant information, to the nationwide mortgage licensing
23 6 system and registry subject to the confidentiality provisions
23 7 of section 535D.15.

23 8 Sec. 20. NEW SECTION. 535D.19 UNIQUE IDENTIFIER SHOWN.

23 9 The unique identifier of any person originating a

23 10 residential mortgage loan shall be clearly shown on all
23 11 residential mortgage loan application forms, solicitations, or
23 12 advertisements, including business cards or internet websites,
23 13 and any other documents as established by rule, regulation, or
23 14 order of the superintendent.

23 15 Sec. 21. NEW SECTION. 535D.20 OPERATING WITHOUT A
23 16 LICENSE == PENALTY.

23 17 A person who, without first obtaining a license under this
23 18 chapter, engages in the business or occupation of, or
23 19 advertises or holds the person out as, or claims to be, or
23 20 temporarily acts as, a mortgage loan originator in this state
23 21 is guilty of a class "D" felony and may be prosecuted by the
23 22 attorney general or a county attorney.

23 23 Sec. 22. NEW SECTION. 535D.21 ADMINISTRATIVE AUTHORITY.

23 24 The superintendent shall have broad administrative
23 25 authority to administer, interpret, and enforce this chapter
23 26 and to promulgate rules implementing this chapter.

23 27 Sec. 23. TRANSITION PROVISIONS. If an individual
23 28 registrant who was registered under chapter 535B before
23 29 January 1, 2010, meets the qualifications for licensure in
23 30 section 535D.6, subsections 1, 2, 3, 6, and 7, as enacted by
23 31 this Act, but has not completed the prelicensing education
23 32 requirements pursuant to section 535D.7, as enacted by this
23 33 Act, or passed a written test that meets the requirements of
23 34 section 535D.8, as enacted by this Act, by January 1, 2010,
23 35 the superintendent may issue the individual a temporary
24 1 mortgage loan originator license under chapter 535D, as
24 2 enacted by this division of this Act. The temporary mortgage
24 3 loan originator license shall expire on December 31, 2010, and
24 4 beginning January 1, 2011, the individual must meet all of the
24 5 qualifications for licensure specified in section 535D.6, as
24 6 enacted by this Act, to obtain a license.

24 7 Sec. 24. EFFECTIVE DATE. This division of this Act takes
24 8 effect July 1, 2009.

24 9 DIVISION II

24 10 MORTGAGE

24 11 BANKERS AND BROKERS

24 12 Sec. 25. Section 535B.1, subsection 2, Code 2009, is
24 13 amended by striking the subsection.

24 14 Sec. 26. Section 535B.1, subsections 4 and 5, Code 2009,
24 15 are amended to read as follows:

24 16 4. "Mortgage banker" means a person who does one or more
24 17 of the following:

24 18 a. Makes at least four mortgage loans on residential real
24 19 property located in this state in a calendar year.

24 20 b. Originates at least four mortgage loans on residential
24 21 real property located in this state in a calendar year and
24 22 sells four or more such loans in the secondary market.

24 23 c. Services at least four mortgage loans on residential
24 24 real property located in this state. However, a natural
24 25 person, who services less than fifteen mortgage loans on
24 26 residential real estate within the state and who does not sell
24 27 or transfer mortgage loans, is exempt from this paragraph if
24 28 that person is otherwise exempt from the provisions of this
24 29 chapter.

24 30 "Mortgage banker" does not include a person ~~whose job~~
~~responsibilities on behalf of a licensee or individual~~
~~registrant are to process mortgage loans, are solely clerical~~
~~in nature, or otherwise do not involve direct contact with~~
~~loan applicants who is a licensed mortgage loan originator~~
24 35 ~~under chapter 535D.~~

25 1 5. "Mortgage broker" means a person who arranges or
25 2 negotiates, or attempts to arrange or negotiate, at least four
25 3 mortgage loans or commitments for four or more such loans on
25 4 residential real property located in this state in a calendar
25 5 year. "Mortgage broker" does not include a person ~~whose job~~
~~responsibilities on behalf of a licensee or individual~~
~~registrant are to process mortgage loans, are solely clerical~~
~~in nature, or otherwise do not involve direct contact with~~
~~loan applicants who is a licensed mortgage loan originator~~
25 10 ~~under chapter 535D.~~

25 11 Sec. 27. Section 535B.4, subsection 7, Code 2009, is
25 12 amended to read as follows:

25 13 7. Applications for renewals of licenses ~~and individual~~
~~registrations~~ under this chapter must be filed with the
25 15 administrator before December 1 of the year of expiration on
25 16 forms prescribed by the administrator. A renewal application
25 17 must be accompanied by a fee of two hundred dollars for a
25 18 license to transact business solely as a mortgage broker, and
25 19 four hundred dollars for a license to transact business as a
25 20 mortgage banker. ~~The fee to renew an individual registration~~

~~25 21 shall be the fee determined pursuant to section 535B.4A. The~~
25 22 administrator may assess a late fee of ten dollars per day for
25 23 applications or registrations accepted for processing after
25 24 December 1.

25 25 Sec. 28. Section 535B.7, Code 2009, is amended to read as
25 26 follows:

25 27 535B.7 DISCIPLINARY ACTION.

25 28 1. The administrator may, pursuant to chapter 17A, take
25 29 disciplinary action against a licensee ~~or individual~~
~~25 30 registrant~~ if the administrator finds any of the following:

25 31 a. The licensee ~~or individual registrant~~ has violated a
25 32 provision of this chapter or a rule adopted under this chapter
25 33 or any other state or federal law applicable to the conduct of
25 34 its business including but not limited to chapters 535 and
25 35 535A.

26 1 b. A fact or condition exists which, if it had existed at
26 2 the time of the original application for the license ~~or~~
~~26 3 individual registration~~, would have warranted the
26 4 administrator to refuse originally to issue the license ~~or~~
~~26 5 individual registration~~.

26 6 c. The licensee is found upon investigation to be
26 7 insolvent, in which case the license shall be revoked
26 8 immediately.

26 9 d. The licensee ~~or individual registrant~~ has violated an
26 10 order of the administrator.

26 11 2. The administrator may impose one or more of the
26 12 following disciplinary actions against a licensee ~~or~~
~~26 13 individual registrant~~:

26 14 a. Revoke a license ~~or individual registration~~.

26 15 b. Suspend a license ~~or individual registration~~ until
26 16 further order of the administrator or for a specified period
26 17 of time.

26 18 c. Impose a period of probation under specified
26 19 conditions.

26 20 d. Impose civil penalties in an amount not to exceed five
26 21 thousand dollars for each violation.

26 22 e. Issue a citation and warning respecting licensee ~~or~~
~~26 23 individual registrant~~ behavior.

26 24 f. Order the licensee ~~or individual registrant~~ to pay
26 25 restitution.

26 26 3. The administrator may order an emergency suspension of
26 27 a licensee's license ~~or an individual's registration~~ pursuant
26 28 to section 17A.18A. A written order containing the facts or
26 29 conduct which warrants the emergency action shall be timely
26 30 sent to the licensee ~~or individual registrant~~ by restricted
26 31 certified mail. Upon issuance of the suspension order, the
26 32 licensee ~~or individual registrant~~ must also be notified of the
26 33 right to an evidentiary hearing. A suspension proceeding
26 34 shall be promptly instituted and determined.

26 35 4. Except as provided in this section, a license ~~or~~
~~27 1 individual registration~~ shall not be revoked or suspended
27 2 except after notice and a hearing thereon in accordance with
27 3 chapter 17A.

27 4 5. A licensee may surrender a license ~~and an individual~~
~~27 5 registrant may surrender an individual registration~~ by
27 6 delivering to the administrator written notice of surrender,
27 7 but a surrender does not affect the licensee's ~~or individual~~
~~27 8 registrant's~~ civil or criminal liability for acts committed
27 9 before the surrender.

27 10 6. A revocation, suspension, or surrender of a license ~~or~~
~~27 11 individual registration~~ does not impair or affect the
27 12 obligation of a preexisting lawful contract between the
27 13 licensee ~~or individual registrant~~ and any person, including a
27 14 mortgagor.

27 15 Sec. 29. NEW SECTION. 535B.7A PROHIBITED ACTS.

27 16 It is a violation of this chapter for a licensee to engage
27 17 in any of the prohibited acts or practices in section 535D.16.

27 18 Sec. 30. Section 535B.8, Code 2009, is amended to read as
27 19 follows:

27 20 535B.8 OPERATING WITHOUT A LICENSE ~~OR REGISTRATION~~.

27 21 A person who, without first obtaining a license ~~or~~
~~27 22 individual registration~~ under this chapter, engages in the
27 23 business or occupation of, or advertises or holds the person
27 24 out as, or claims to be, or temporarily acts as, a mortgage
27 25 banker or mortgage broker in this state is guilty of a class
27 26 "D" felony and may be prosecuted by the attorney general or a
27 27 county attorney.

27 28 Sec. 31. Section 535B.9, subsection 1, Code 2009, is
27 29 amended to read as follows:

27 30 1. An applicant for a license shall file with the
27 31 administrator a bond furnished by a surety company authorized

27 32 to do business in this state, together with evidence of
27 33 whether the applicant is seeking to transact business as a
27 34 mortgage broker or as a mortgage banker. ~~The Until such time~~
27 35 ~~as the superintendent pursuant to administrative rule~~
28 1 ~~determines a bond amount that reflects the dollar value of~~
28 2 ~~loans originated, the bond shall be in the amount of one~~
28 3 ~~hundred thousand dollars. The bond shall be continuous in~~
28 4 ~~nature until canceled by the surety with not less than thirty~~
28 5 ~~days' notice in writing to the mortgage broker or mortgage~~
28 6 ~~banker and to the administrator indicating the surety's~~
28 7 ~~intention to cancel the bond on a specific date. The bond~~
28 8 ~~shall be for the use of the state and any persons who may have~~
28 9 ~~causes of action against the applicant. The bond shall be~~
28 10 ~~conditioned upon the applicant's faithfully conforming to and~~
28 11 ~~abiding by this chapter and any rules adopted under this~~
28 12 ~~chapter and shall require that the surety pay to the state and~~
28 13 ~~to any persons all moneys that become due or owing to the~~
28 14 ~~state and to the persons from the applicant by virtue of this~~
28 15 ~~chapter.~~

28 16 Sec. 32. Section 535B.10, subsection 2, Code 2009, is
28 17 amended to read as follows:

28 18 2. For the purposes of discovering violations of this
28 19 chapter or any related rules or for securing information
28 20 lawfully required under this chapter, the administrator may at
28 21 any time and as often as the administrator deems necessary,
28 22 but in no event less frequently than once during each two-year
28 23 period, investigate the business and examine the books,
28 24 accounts, records, and files used by a licensee ~~or individual~~
28 25 ~~registrant.~~

28 26 Sec. 33. Section 535B.14, Code 2009, is amended to read as
28 27 follows:

28 28 535B.14 RULEMAKING AUTHORITY.

28 29 The administrator may adopt, amend, or repeal rules to aid
28 30 in the administration and enforcement of this chapter,
28 31 including rules providing the grounds for denial of ~~an~~
28 32 ~~individual registration a license based on information~~
28 33 ~~received as a result of a background check, character and~~
28 34 ~~fitness grounds, and any other grounds for which an individual~~
28 35 ~~registrant or a licensee may be disciplined.~~

29 1 Sec. 34. Section 535B.17, Code 2009, is amended to read as
29 2 follows:

29 3 535B.17 POWERS AND DUTIES OF THE ADMINISTRATOR == WAIVER
29 4 AUTHORITY.

29 5 In addition to any other duties imposed upon the
29 6 administrator by law, the administrator may participate in a
29 7 multistate automated licensing system for mortgage bankers,
29 8 mortgage brokers, and ~~individual registrants mortgage loan~~
29 9 ~~originators.~~ For this purpose, the administrator may
29 10 establish by rule or order new requirements as necessary,
29 11 including but not limited to requirements that license
29 12 applicants ~~and individual registrants~~ submit to fingerprinting
29 13 and criminal history checks, and pay fees therefor.

29 14 Sec. 35. NEW SECTION. 535B.18 MORTGAGE CALL REPORTS.

29 15 Each licensee shall submit to the nationwide mortgage
29 16 licensing system and registry, as defined in section 535D.3,
29 17 reports of condition, which shall be in such form and shall
29 18 contain such information as the nationwide mortgage licensing
29 19 system and registry may require.

29 20 Sec. 36. Section 535B.4A, Code 2009, is repealed.

29 21 Sec. 37. Section 535B.9A, Code 2009, is repealed.

29 22 Sec. 38. EFFECTIVE DATES.

29 23 1. The sections of this division of this Act amending
29 24 section 535B.9 and enacting sections 535B.7A and 535B.18 take
29 25 effect July 1, 2009.

29 26 2. The sections of this division of this Act amending
29 27 sections 535B.1, 535B.4, 535B.7, 535B.8, 535B.10, 535B.14, and
29 28 535B.17 to eliminate the classification of "individual
29 29 registrant" and repealing sections 535B.4A and 535B.9A take
29 30 effect January 1, 2010.

29 31 DIVISION III
29 32 REGULATED AND INDUSTRIAL LOANS

29 33 Sec. 39. Section 536.3, Code 2009, is amended by striking
29 34 the section and inserting in lieu thereof the following:

29 35 536.3 BOND.

30 1 An applicant for a license shall file with the
30 2 superintendent a bond furnished by a surety company authorized
30 3 to do business in this state. Until such time as the
30 4 superintendent through the administrative rule process
30 5 determines a bond amount that reflects the dollar value of
30 6 loans originated, the bond shall be in the amount of
30 7 twenty-five thousand dollars. The bond shall be continuous in

30 8 nature until canceled by the surety with not less than thirty
30 9 days' notice in writing to the licensee and to the
30 10 superintendent indicating the surety's intention to cancel the
30 11 bond on a specific date. The bond shall be for the use of the
30 12 state and any persons who may have causes of action against
30 13 the applicant. The bond shall be conditioned upon the
30 14 applicant's faithfully conforming to and abiding by this
30 15 chapter and any rules adopted under this chapter and shall
30 16 require that the surety pay to the state and to any persons
30 17 all moneys that become due or owing to the state and to the
30 18 persons from the applicant by virtue of this chapter.

30 19 Sec. 40. Section 536.6, subsection 1, Code 2009, is
30 20 amended to read as follows:

30 21 1. If the superintendent ~~shall find~~ finds at any time that
30 22 the bond is insecure or exhausted or otherwise of doubtful
30 23 validity or collectibility, an additional bond to be approved
30 24 by the superintendent, with one or more sureties and of the
30 25 character specified in section 536.3, in ~~the a sum of not more~~
~~30 26 than twenty-five thousand dollars not to exceed that amount~~
30 27 determined pursuant to section 536.3, shall be filed by the
30 28 licensee within ten days after written demand upon the
30 29 licensee by the superintendent.

30 30 Sec. 41. Section 536.11, Code 2009, is amended by adding
30 31 the following new subsection:

30 32 NEW SUBSECTION. 3. Each licensee making residential
30 33 mortgage loans shall submit to the nationwide mortgage
30 34 licensing system and registry reports of condition, which
30 35 shall be in such form and shall contain such information as
31 1 the nationwide mortgage licensing system and registry may
31 2 require. For purposes of this subsection, "nationwide
31 3 mortgage licensing system and registry" and "residential
31 4 mortgage loan" mean the same as defined in section 535D.3.

31 5 Sec. 42. NEW SECTION. 536.30 POWERS AND DUTIES OF THE
31 6 SUPERINTENDENT == NATIONWIDE SYSTEM.

31 7 In addition to any other duties imposed upon the
31 8 superintendent by law, the superintendent may require
31 9 applicants and licensees to be licensed through the nationwide
31 10 mortgage licensing system and registry as defined in section
31 11 535D.3. In order to carry out this requirement, the
31 12 superintendent may participate in the nationwide mortgage
31 13 licensing system and registry. For this purpose, the
31 14 superintendent may establish by rule or order new requirements
31 15 as necessary, including but not limited to requirements that
31 16 applicants, including officers and directors and those who
31 17 have control of the applicant, submit to fingerprinting,
31 18 criminal history checks, and pay fees therefor.

31 19 Sec. 43. Section 536A.7A, subsection 1, Code 2009, is
31 20 amended to read as follows:

31 21 1. An applicant for a license shall file with the
31 22 superintendent a bond furnished by a surety company authorized
31 23 to do business in this state. ~~The~~ Until such time as the
31 24 superintendent pursuant to administrative rule determines a
31 25 bond amount that reflects the dollar value of the loans

31 26 originated, the bond shall be in the amount of twenty-five
31 27 thousand dollars. The bond shall be continuous in nature
31 28 until canceled by the surety with not less than thirty days'
31 29 notice in writing to the applicant and to the superintendent
31 30 indicating the surety's intention to cancel the bond on a
31 31 specific date. The bond shall be for the use of the state and
31 32 any persons who may have causes of action against the
31 33 applicant. The bond shall be conditioned upon the applicant's
31 34 faithfully conforming to and abiding by this chapter and any
31 35 rules adopted under this chapter and shall require that the
32 1 surety pay to the state and to any persons all moneys that
32 2 become due or owing to the state and to the persons from the
32 3 applicant by virtue of this chapter.

32 4 Sec. 44. Section 536A.14, Code 2009, is amended by adding
32 5 the following new subsection:

32 6 NEW SUBSECTION. 3. Each licensee making residential
32 7 mortgage loans shall submit to the nationwide mortgage
32 8 licensing system and registry reports of condition, which
32 9 shall be in such form and shall contain such information as
32 10 the nationwide mortgage licensing system and registry may
32 11 require. For purposes of this subsection, "nationwide
32 12 mortgage licensing system and registry" and "residential
32 13 mortgage loan" mean the same as defined in section 535D.3.

32 14 Sec. 45. NEW SECTION. 536A.32 POWERS AND DUTIES OF THE
32 15 SUPERINTENDENT == NATIONWIDE SYSTEM.

32 16 In addition to any other duties imposed upon the
32 17 superintendent by law, the superintendent may require
32 18 applicants and licensees to be licensed through the nationwide

32 19 mortgage licensing system and registry as defined in section
32 20 535D.3. In order to carry out this requirement, the
32 21 superintendent may participate in the nationwide mortgage
32 22 licensing system and registry. For this purpose, the
32 23 superintendent may establish by rule or order new requirements
32 24 as necessary, including but not limited to requirements that
32 25 applicants, including officers and directors and those who
32 26 have control of the applicant, submit to fingerprinting,
32 27 criminal history checks, and pay fees therefor.
32 28 Sec. 46. EFFECTIVE DATE. This division of this Act takes
32 29 effect July 1, 2009.

32 30 EXPLANATION

32 31 This bill establishes licensure requirements relating to
32 32 the origination of mortgage loans.

32 33 The bill contains legislative intent provisions relating to
32 34 the importance of residential real estate financing to the
32 35 citizens and economy of this state and stating that the bill's
33 1 provisions are directed at protecting consumers and ensuring
33 2 that the mortgage lending industry is operating without
33 3 unfair, deceptive, or fraudulent practices on the part of
33 4 mortgage loan originators.

33 5 The bill provides, among other definitions, a definition of
33 6 a "mortgage loan originator" as an individual who for
33 7 compensation or gain, or in the expectation of compensation or
33 8 gain, takes a residential mortgage loan application or offers
33 9 or negotiates terms of a residential mortgage loan.

33 10 Exclusions from the definition include an individual engaged
33 11 solely as a loan processor or underwriter as defined in the
33 12 bill other than with the status of an independent contractor;
33 13 an individual who only performs real estate brokerage
33 14 activities and is licensed in accordance with state law,
33 15 unless the individual is compensated by a lender, a mortgage
33 16 broker, or other mortgage loan originator or by any agent of
33 17 such lender, mortgage broker, or mortgage loan originator; an
33 18 individual solely involved in extensions of credit relating to
33 19 federally defined timeshare plans; and an individual involved
33 20 solely in servicing residential mortgage loans, as defined in
33 21 the bill, provided the individual does not take a residential
33 22 mortgage loan application and offer or negotiate terms of a
33 23 residential mortgage loan for compensation or gain. The bill
33 24 also provides a definition of the "nationwide mortgage
33 25 licensing system and registry" (hereafter referred to as the
33 26 "registry") as the mortgage licensing system developed and
33 27 maintained by the conference of state bank supervisors and the
33 28 American association of residential mortgage regulators for
33 29 the licensing and registration of licensed mortgage loan
33 30 originators.

33 31 The bill prohibits an individual from engaging in the
33 32 business of a mortgage loan originator with respect to any
33 33 residential real estate located in Iowa without first becoming
33 34 licensed pursuant to new Code chapter 535D. In addition, a
33 35 licensed mortgage loan originator must register with and
34 1 maintain a valid unique identifier issued by the nationwide
34 2 mortgage licensing system and registry. These provisions
34 3 apply to individuals engaged in the business of a mortgage
34 4 loan originator and registered under Code chapter 535B as an
34 5 individual registrant beginning January 1, 2010. The bill
34 6 provides exemptions from the licensing provisions for
34 7 registered mortgage loan originators as defined in the bill,
34 8 individuals who offer or negotiate terms of a residential
34 9 mortgage loan with or on behalf of an immediate family member,
34 10 individuals who offer or negotiate terms of a residential
34 11 mortgage loan secured by a dwelling that served as the
34 12 individual's residence, and licensed attorneys who negotiate
34 13 the terms of a residential mortgage loan on behalf of a client
34 14 as an ancillary matter to the attorney's representation of the
34 15 client, unless the attorney is compensated by a lender, a
34 16 mortgage broker, or mortgage loan originator or by any agent
34 17 of such lender, mortgage broker, or mortgage loan originator.

34 18 The bill authorizes the superintendent of banking to adopt
34 19 rules relating to the application and licensure process, and
34 20 relating to participation in the nationwide mortgage licensing
34 21 system and registry, and permits the superintendent to waive
34 22 or modify Code chapter requirements as reasonably necessary to
34 23 participate in the registry.

34 24 The bill provides for information relative to an
34 25 applicant's identity to be submitted to the registry, and
34 26 specifies various conditions of licensure including specified
34 27 prior convictions, demonstrated financial responsibility and
34 28 character, completion of prelicensing education requirements
34 29 contained in the bill, and successful passage of a licensing

34 30 test qualified by the registry. The bill also addresses
34 31 standards for license renewal and nonrenewal, continuing
34 32 education requirements, duties and powers of the
34 33 superintendent relative to mortgage loan originator
34 34 regulation, and grounds for disciplinary action against a
34 35 licensee and civil enforcement authority on the part of the
35 1 superintendent. The bill requires the posting of a surety
35 2 bond, but provides that if the mortgage loan originator is
35 3 already the subject of a bond pursuant to Code chapter 535B,
35 4 536, or 536A, the existing bond will suffice. The bill
35 5 provides that if the superintendent determines that it is not
35 6 feasible to establish surety bonding requirements, the
35 7 superintendent may alternatively by rule establish a recovery
35 8 fund to be paid into by mortgage loan originators.
35 9 The bill addresses confidentiality, stating that the
35 10 requirements under any federal law or Code chapter 22
35 11 regarding the privacy or confidentiality of any information or
35 12 material provided to the nationwide mortgage licensing system
35 13 and registry, and any privilege arising under federal or state
35 14 law, including the rules of any federal or state court, with
35 15 respect to such information or material, shall continue to
35 16 apply to such information or material after the information or
35 17 material has been disclosed to the nationwide mortgage
35 18 licensing system and registry. The bill provides, however,
35 19 that this information and material may be shared with any
35 20 state or federal regulatory officials with mortgage industry
35 21 oversight authority without the loss of privilege or
35 22 confidentiality protections. The bill authorizes the
35 23 superintendent to enter into agreements or sharing
35 24 arrangements with other governmental agencies, the conference
35 25 of state bank supervisors, the American association of
35 26 residential mortgage regulators, or other associations
35 27 representing governmental agencies. The bill further states
35 28 that confidentiality protections shall not apply with respect
35 29 to information or material relating to the employment history
35 30 of, and publicly adjudicated disciplinary and enforcement
35 31 actions against, mortgage loan originators that are included
35 32 in the nationwide mortgage licensing system and registry for
35 33 access by the public.

35 34 The bill contains provisions authorizing the superintendent
35 35 to conduct investigations and examinations relating to
36 1 licensing and violations of the new Code chapter, and
36 2 specifies a list of prohibited acts and practices. The bill
36 3 specifies that engaging in the business or occupation of, or
36 4 advertising or representing oneself to be, a mortgage loan
36 5 originator without possessing a license under the Code chapter
36 6 constitutes a class "D" felony punishable by confinement for
36 7 no more than five years and a fine of at least \$750 but not
36 8 more than \$7,500.

36 9 Additionally, the bill requires the superintendent to
36 10 regularly coordinate with and report information to the
36 11 registry, and requires the unique identifier assigned by the
36 12 registry to appear on all documents, cards, and websites
36 13 relating to a residential mortgage loan.

36 14 These provisions enacting new Code chapter 535D are
36 15 contained within division I of the bill, and take effect July
36 16 1, 2009. The bill provides that individuals with the status
36 17 of individual registrants under Code chapter 535B prior to
36 18 January 1, 2010, who meet licensing requirements under Code
36 19 chapter 535D but have not completed prelicensing education
36 20 requirements or passed the required written test may be issued
36 21 a temporary mortgage loan originator license. Beginning
36 22 January 1, 2011, such individuals must comply with all
36 23 requirements for licensure.

36 24 Division II of the bill modifies related provisions of Code
36 25 chapters 535B, 536, and 536A, dealing with mortgage bankers
36 26 and brokers, regulated loans, and industrial loans,
36 27 respectively. The bill deletes references to "individual
36 28 registrants" in Code chapter 535B, which are currently
36 29 identified as a natural person who is a mortgage banker or
36 30 mortgage broker and who is employed by, under contract with,
36 31 or is an agent of a licensee under Code chapter 535B. The
36 32 bill states that a mortgage banker or mortgage broker does not
36 33 include or refer to a licensed mortgage loan originator, makes
36 34 applicable the list of prohibited acts and practices in new
36 35 Code chapter 535D to mortgage bankers and mortgage brokers,
37 1 modifies bond requirements to provide for determination by the
37 2 superintendent by rule of a bond amount reflecting the dollar
37 3 value of loans originated by a mortgage banker or mortgage
37 4 broker, extends participation by the administrator under Code
37 5 chapter 535B in a multistate automated licensing system to one

37 6 including mortgage loan originators, and establishes registry
37 7 reporting requirements applicable to licensees.
37 8 The bill provides that sections of the division which
37 9 eliminate the classification of "individual registrant" take
37 10 effect January 1, 2010, with remaining sections taking effect
37 11 July 1, 2009.
37 12 With regard to Code chapter 536, dealing with regulated
37 13 loans and amended in division III of the bill, the bill
37 14 supplies new bond requirements containing a provision similar
37 15 to that applicable to mortgage bankers and mortgage brokers
37 16 regarding determination by the superintendent of a dollar
37 17 value reflecting the amount of loans originated, and extends
37 18 similar registry reporting requirements and integration
37 19 provisions between the superintendent and the registry.
37 20 Substantially similar modifications are made with regard to
37 21 industrial loans regulated pursuant to Code chapter 536A.
37 22 Division III takes effect July 1, 2009.
37 23 LSB 1357DP 83
37 24 rn/nh/24.3